

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

SMALL EMPLOYER HEALTH BENEFITS PROGRAM

Small Employer Health Benefit Plans

Proposed Amendments: N.J.A.C. 11:21 Appendix Exhibits F, G, W, Y, HH, and II

Proposed New Rule: N.J.A.C. 11:21 Appendix Exhibit I

Authorized By: New Jersey Small Employer Health Benefits Program Board of Directors (Ellen DeRosa, Executive Director).

Authority: N.J.S.A. 17B:27A-17 et seq.

Calendar Reference: See Summary below for the explanation of the inapplicability of the calendar requirement.

Proposal Number: PRN 2015- .

As required by N.J.S.A. 17B:27A-51, interested parties may testify with respect to the standard health benefits plans, set forth in N.J.A.C. 11:21 Appendix Exhibits F, G, I, W, Y, HH, and II at a **public hearing** to be held Thursday, October 1, 2015 at 9:00 A.M. in the New Jersey Department of Banking and Insurance, 11th floor Conference Room, 20 West State Street, Trenton, New Jersey.

Submit written comments by October 14, 2015 to:

Ellen DeRosa, Executive Director

Small Employer Health Benefits Program

NJ Department of Banking and Insurance

20 West State Street
P.O. Box 325
Trenton, NJ 08625-0325
Fax: 609-633-2030
E-mail: ellen.derosa@dobi.nj.gov

The agency proposal follows:

Summary

The Small Employer Health Benefits (SEH) Program Board of Directors (Board) establishes the standard health benefits plans (standard plans) that may be offered in the small employer market in New Jersey, pursuant to authority of P.L. 1992, c. 162 (codified at N.J.S.A. 17B:27A-17 et seq.), as subsequently amended and supplemented. The SEH Program Board has set forth the requirements with which carriers must comply in offering standard plans in rules at N.J.A.C. 11:21, and has set forth standard plan language for policies, contracts, certificates, and evidences of coverage in the Appendix to N.J.A.C. 11:21. Specifically, the language for the policy forms for the standard plans known as Plans B, C, D, and E is in Exhibit F of the Appendix, while the language of the certificates is contained in Exhibit W; the language for the contract form for the HMO Plan is in Exhibit G, and the language for the HMO evidence of coverage is in Exhibit Y; and the language for the HMO-POS Plan contract form is in Exhibit HH, while the language for the HMO-POS evidence of coverage is in Exhibit II. (In developing their policies/contracts and certificates/evidences of coverage, carriers also refer to Exhibit K, which provides explanations about how carriers may use certain variable language in the standard plans.)

The following proposed amendments generally apply to each of the standard plans set forth in Exhibits F, G, W, Y, HH, and II.

As required by 45 CFR 156.115(a)(6) the SEH Program Board proposes amendments to the schedule pages and the Dental Benefits and Vision Benefit provisions such that pediatric dental and vision coverage no longer ends on the date the child turns age 19 but rather extends through the end of the month in which the child turns age 19.

The SEH Program Board proposes updating the variable text on the schedule pages to illustrate the increase in the greatest amount of maximum out of pocket for 2016 consistent with Federal requirements at 45 CFR 156.130. The schedule pages, as amended, illustrate a maximum amount of \$6,850 which is the maximum amount permitted during 2016. As the maximum out of pocket increases each year under Federal law, the variable range for the maximum out of pocket amount permitted for the standard plans is intended to increase also.

The SEH Program Board proposes several amendments to address coverage for telemedicine, e-visits and virtual visits. All of the amendments appear as variable text which means carriers have the option to use or not use some or all of the new text. The new text defines each of these terms, allows the inclusion of these terms on the schedule page to allow carriers to specify any applicable cost sharing for each of these types of service, expands the practitioner charges section to explain that services provided as telemedicine visits, e-visits and virtual visits are covered under the plan, and modifies the exclusion for telephone consultations to create an exception for telemedicine, e-visits and virtual visits.

The SEH Program Board is proposing to amend the definition of dependent to address the age 26 limit. The Board proposes the inclusion of variable text such that carriers may continue to define dependent as a child under the age of 26 which means the child ceases to be a

dependent on his or her birthday or may allow the child to be considered a dependent through the end of the month in which the child turns age 26. The opportunity to consider a child a dependent through the end of the month will facilitate the opportunity to buy replacement coverage for the child without a lapse in coverage. Since carriers selling coverage in the individual market are required to allow first of the month effective dates, a child who turns age 26 on any date other than the end of the month would have a lapse in coverage if child needs to get individual coverage and the replacement individual plan is not effective until the first of the month. With the option to allow an end of the month termination date, the child would have the opportunity for continuous coverage since the new individual plan could be effective the day after the dependent coverage ends.

The SEH Board proposes an amendment to the definition of durable medical equipment, the durable medical equipment provision and the hearing aid provision to state that certain durable medical equipment and hearing aids are habilitative devices. 45 CFR 115(a)(5) requires coverage of habilitative devices. Since the term habilitative devices was not used in the standard plans, the Board is expanding the text of the existing durable medical equipment and hearing aid benefits to explain that these existing covered supplies are habilitative devices.

The SEH Board proposes amending the definition of triggering event to include court orders of coverage as required by 45 CFR 155.420(b)(2)(v).

The SEH Board proposes amending the maximum out of pocket (MOOP) text used for plans issued as high deductible health plans to allow a single person covered under a family plan to satisfy the single MOOP rather than requiring the single person to satisfy the family MOOP.

This amendment is required by Section 1302(c)(1) of the Patient Protection and Affordable Care Act (ACA) and the FAQs about ACA Implementation dated May 26, 2015.

The SEH Program Board is proposing to amend the Payment of Premiums-Grace Period provision to add variable text that would be included when the group policy or group contract is issued to a small employer through the SHOP. As required by 45 CFR 155.70, failure to pay premium by the end of the grace period results in termination of coverage as of the paid-to-date. The proposed amended text would apply only to policies issued through the SHOP. Policies not issued through the SHOP will continue to provide coverage through the end of the grace period.

In addition, the SEH Program Board is proposing to amend the participation requirement provisions to delete the participation provision that was specific to policies issued through the SHOP, as required by 45 CFR 155.705(b)(10). With the amendment, policies issued through the SHOP and policies not issued through the SHOP will use the same participation requirements that the existing participation provision states is applicable to policies issued outside the SHOP. The SEH Board proposes the inclusion of variable text addressing participation credit for individual policies with respect to the SHOP.

The SEH Board proposes a new rider set forth in proposed Exhibit I. The rider includes coverage for treatment of infertility as required by the definition at N.J.S.A. 17B:27-46.1x which applies to employers with 50 or more employees. With the definition of small employer expanding to 100 employees, the benefits required by N.J.S.A. 17B:27-46.1x must be made available to all small employers, as required by the guaranteed issue requirements of 45 CFR 147.104.

SEH Rulemaking Procedures

The SEH Board is proposing these amendments in accordance with the special action process established at N.J.S.A. 17B:27A-51, as an alternative to the common rulemaking process specified at N.J.S.A. 52:14B-1 et seq. Pursuant to N.J.S.A. 17B:27A-51, the SEH Board may expedite adoption of certain actions, including modification of the SEH Program's health benefits plans and policy forms, if the SEH Board provides interested parties a minimum 20-day period during which to comment on the Board's intended action following notice of it in three newspapers of general circulation, with instructions for obtaining a detailed description of the proposed action and the manner for submitting comments to the Board. Concurrently, the SEH Board must forward notice of the proposed action to the Office of Administrative Law (OAL) for publication in the New Jersey Register (note, however, that the comment period runs from the date the notice of the proposed action is submitted to the newspapers and OAL, not from the date of publication of the notice in the New Jersey Register.) The SEH Board is also required to send notice of the intended action to affected trade and professional associations, carriers, and other interested persons who may request such notice. In addition, for intended modifications to the health benefits plans, the SEH Board must allow for testimony to be presented at a public hearing prior to adopting any such modifications. The date, time, and place of the public hearing for these specific proposed amendments is presented at the beginning of this notice.

Subsequently, the SEH Board may adopt its proposed action immediately upon the close of the comment period or the public hearing (whichever occurs later) by submitting the adopted action to the OAL for publication. The adopted action is effective upon the date of its submission to the OAL, or such later date as the Board may designate. The Board need not respond to commenters as part of the notice of adoption, but if the Board does not, the Board will

respond to (timely submitted) comments shortly thereafter in a separately-prepared report which will be submitted to OAL for publication in the New Jersey Register.

Because expedited actions adopted by the Board pursuant to N.J.S.A. 17B:27A-51 are accomplished notwithstanding the provisions of the Administrative Procedure Act, the quarterly calendar requirement established by the Administrative Procedure Act (as amended) and set forth at N.J.A.C. 17:30-3.1 is not applicable when the Board uses its special rulemaking procedures. Please note that the unique provisions of N.J.S.A. 17B:27A-51 may result in the publication of this rule proposal in the New Jersey Register after the comment period has concluded.

Social Impact

The SEH Board expects that the amendments to the termination of pediatric dental and pediatric vision coverage as well as the amendment to dependent termination at age 26 will have a positive social impact. Since replacement coverage in the individual market is available for first of the month effective dates, the amendments will allow persons to secure replacement coverage without any lapse in coverage.

The SEH Board expects a positive social impact with respect to the options for telemedicine, e-visits and virtual visits if carriers elect to include one or more of these options in the plans. These options allow patients to receive immediate medical advice from a doctor so they can make timely and informed decisions as to care.

The proposed amendment to identify existing items that qualify as habilitative devices will not have social impact. The amendment is definitional and not a substantive amendment.

The proposed amendment to the triggering event definition will have a positive social impact in that persons eligible via court order will have the opportunity to immediately secure coverage.

The proposed amendment to the maximum out of pocket for high deductible plans will have a positive social impact on consumers. Consumers covered under family plans who incurred significant medical expenses have been unable to receive full benefits because their personal expenses did not satisfy a family level maximum out of pocket. The amendment will enable individual members of a family to reach full benefits more quickly.

The proposed new rule addressing coverage for the treatment of infertility will make coverage available to small employer groups that have previously been unable to purchase such coverage.

Economic Impact

The IHC Board expects a slight positive economic impact as a result of amendments to allow coverage for telemedicine, e-visits and virtual visits. To the extent these services could alleviate the need for a consumer to take time off from work to go to a doctor the consumer can save time and the cost associated with a visit.

The SEH Board expects no economic impact as a result of the remaining changes to definitions.

The SEH Board expects positive economic impact to consumers who purchase family coverage under a high deductible health plan. The opportunity to satisfy a single level maximum out of pocket will mean individuals in a family will be eligible for full benefits sooner than if they had to wait for the family maximum out of pocket to be satisfied. They will thus incur less out of pocket costs.

Federal Standards Statement

State agencies that propose to adopt or amend State rules that exceed Federal standards regarding the same subject matter are required to include in the rulemaking document a Federal standards analysis. These proposed amendments are subject to Federal requirements addressing

certain standards for health insurance contracts. The SEH Board does not believe the proposed amendments exceed the Federal requirements.

Jobs Impact

The SEH Board does not anticipate that any jobs will be generated or lost as a result of the proposed amendments. Commenters may submit data or studies on the potential jobs impact of the proposed amendments together with their comments on other aspects of the proposal.

Agriculture Industry Impact

The SEH Board does not believe the proposed amendments will have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The SEH Board does not believe the proposed amendments apply to “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but acknowledges the possibility that one or more carriers might meet that definition. The proposed amendments do not establish new or additional reporting or recordkeeping requirements, but have the effect of establishing new compliance requirements, as described in the Summary above.

No differentiation in compliance requirements is provided based on business size. The requirements of and the goals to be achieved by the Federal law in question does not vary based on business size of a carrier, and the SEH Board would not be at liberty to make such a distinction even if the SEH Board were to consider such a distinction warranted. Accordingly, the proposed amendments provide no differentiation in compliance requirements based on business

size. No additional professional services would have to be employed in order to comply with the proposed amendments.

Housing Affordability Impact Analysis

The SEH Board does not believe the proposed amendments will have an impact on housing affordability in this State in that the proposed amendments relate to the benefit levels and terms of standard health benefits plans offered in New Jersey for purchase by individuals.

Smart Growth Development Impact Analysis

The SEH Board does not believe the proposed amendments will have an impact on the number of housing units or the availability of affordable housing in the State, or that the proposed amendments will have an effect on smart growth development in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments relate to the benefit levels and terms of standard health benefits plans offered in New Jersey.

Full text of the proposal follows:

APPENDIX

OFFICE OF ADMINISTRATIVE LAW NOTE: The New Jersey Small Employer Health Benefits Program Board is proposing amendments to N.J.A.C. 11:21 Appendix Exhibits F, G, K, W, Y, HH, and II. Pursuant to N.J.S.A. 52:14B-7(c) and N.J.A.C. 1:30-5.2(a)2, the Exhibits as proposed for amendment are not published herein, but may be reviewed by contacting:

New Jersey Small Employer Health Benefits Program

20 West State Street, 10th Floor

PO Box 325

Trenton, NJ 08625-0325

New Jersey Office of Administrative Law

9 Quakerbridge Plaza

PO Box 049

Trenton, NJ 08625-0049